

MONDAY, APRIL 26, 2004
EIGHTY-FOURTH LEGISLATIVE DAY

CALL TO ORDER

The Senate met at 5:00 p.m., and was called to order by Mr. Speaker Wilder.

PRAYER

The proceedings were opened with prayer by Reverend Joseph Parker of Mary's Chapel AME Church in Fayetteville, Tennessee, a guest of Senator Ketron.

PLEDGE OF ALLEGIANCE

Senator Dixon led the Senate in the Pledge of Allegiance to the Flag.

ROLL CALL

The roll call was taken with the following results:

Present 31

Senators present were: Atchley, Beavers, Bryson, Burchett, Burks, Clabough, Cohen, Cooper, Crowe, Crutchfield, Dixon, Ford, Fowler, Graves, Harper, Henry, Herron, Jackson, Ketron, Kilby, Kurita, McLeary, McNally, Miller, Norris, Person, Ramsey, Southerland, Trail, Williams and Mr. Speaker Wilder--31.

COMMUNICATION

April 21, 2004

Lt. Governor John Wilder
1 Legislative Plaza
Nashville, TN 37243

Dear Governor Wilder,

I would like to ask permission to miss all committee meetings on Monday, April 26, including the possibility of missing the Senate Session on Monday night due to a prior business commitment.

Thanking you in advance for your consideration.

Sincerely,

/s/ Joe M. Haynes

APPROVED: Lieutenant Governor
John S. Wilder

PRESENTATION

Senator Kilby presented **Senate Joint Resolution No. 737** to Mr. Stonney Ray Lane.

MR. SPEAKER WILDER RELINQUISHES CHAIR

Mr. Speaker Wilder relinquished the Chair to Senator Graves as Speaker pro tempore.

MOTION

Senator Atchley moved that the rules be suspended for the introduction and immediate consideration of **Senate Joint Resolution No. 1024**, out of order, which motion prevailed.

INTRODUCTION OF RESOLUTION

Senate Joint Resolution No. 1024 by Senator Atchley,
Memorials, Public Service -- Joyce Johnson.

On motion of Senator Atchley, the rules were suspended for the immediate consideration of the resolution.

On motion, **Senate Joint Resolution No. 1024** was adopted by the following vote:

Ayes	31
Noes	0

Senators voting aye were: Atchley, Beavers, Bryson, Burchett, Burks, Clabough, Cohen, Cooper, Crowe, Crutchfield, Dixon, Ford, Fowler, Graves, Harper, Henry, Herron, Jackson, Ketron, Kilby, Kurita, McLeary, McNally, Miller, Norris, Person, Ramsey, Southerland, Trail, Williams and Mr. Speaker Wilder--31.

A motion to reconsider was tabled.

MOTION

Senator Atchley moved that the rules be suspended for the introduction and immediate consideration of **Senate Joint Resolution No. 1025**, out of order, which motion prevailed.

INTRODUCTION OF RESOLUTION

Senate Joint Resolution No. 1025 by Senator Atchley,
Memorials, Public Service -- Tootie Haskins.

On motion of Senator Atchley, the rules were suspended for the immediate consideration of the resolution.

On motion, **Senate Joint Resolution No. 1025** was adopted by the following vote:

Ayes	31
Noes	0

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Senators voting aye were: Atchley, Beavers, Bryson, Burchett, Burks, Clabough, Cohen, Cooper, Crowe, Crutchfield, Dixon, Ford, Fowler, Graves, Harper, Henry, Herron, Jackson, Ketron, Kilby, Kurita, McLeary, McNally, Miller, Norris, Person, Ramsey, Southerland, Trail, Williams and Mr. Speaker Wilder--31.

A motion to reconsider was tabled.

PRESENTATIONS

Senator Atchley presented **Senate Joint Resolution No. 1024** to Joyce Johnson.

Senator Atchley presented **Senate Joint Resolution No. 1025** to Tootie Haskins.

INTRODUCTION OF BILL

The Speaker announced that the following bill was filed for introduction and passed first consideration:

Senate Bill No. 3502 by Senator McLeary.

Milan -- Subject to local approval, provides that the Mayor select department heads, subject to the approval of the Board of Aldermen. Amends Chapter 205 of the Private Acts of 1996; as amended.

HOUSE BILL ON FIRST CONSIDERATION

The Speaker announced that the following House Bill was transmitted to the Senate and passed first consideration:

House Bill No. 3484 -- Taxes, Sales -- Establishes procedures for purchasers and sellers to request refund for sales tax collected from customers on charges for Internet access which under the Prodigy decision were ruled to be not subject to sales and use tax in Tennessee. Amends Tennessee Code Annotated, Title 67.

SENATE BILL ON SECOND CONSIDERATION

The Speaker announced that the following bill passed second consideration and was referred to the appropriate committee:

Senate Bill No. 3501 held on desk.

INTRODUCTION OF RESOLUTIONS

The Speaker announced that the following resolutions were filed for introduction. Pursuant to Rule 21, the resolutions lie over.

Senate Joint Resolution No. 1026 by Senator Graves.

Memorials, Academic Achievement -- Mary Elyse Gragg, Salutatorian, Springfield High School.

Senate Joint Resolution No. 1027 by Senator Graves.

Memorials, Academic Achievement -- Michael H. Kelly, Jr., Salutatorian, Springfield High School.

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Senate Joint Resolution No. 1028 by Senator Graves.

Memorials, Academic Achievement -- Meredith Edmunds, Valedictorian, Springfield High School.

Senate Joint Resolution No. 1029 by Senator Graves.

Memorials, Academic Achievement -- Lorie Beth Allsbrooks, Valedictorian, Springfield High School.

Senate Joint Resolution No. 1030 by Senator Graves.

Memorials, Academic Achievement -- Adam Binkley, Salutatorian, Springfield High School.

RESOLUTIONS LYING OVER

House Joint Resolution No. 1087 -- Memorials, Death -- Houston Monroe Goddard.

The Speaker announced that he had referred House Joint Resolution No. 1087 to Committee on Calendar.

House Joint Resolution No. 1105 -- Memorials, Recognition -- Sixth Grade Class at Jackson County Middle School.

The Speaker announced that he had referred House Joint Resolution No. 1105 to Committee on Calendar.

House Joint Resolution No. 1106 -- Memorials, Recognition -- Jonathan Goodwin, Amanda Keeling, Lance Pirl, Legislative Pages.

The Speaker announced that he had referred House Joint Resolution No. 1106 to Committee on Calendar.

House Joint Resolution No. 1107 -- Memorials, Academic Achievement -- Kelly Leanna Rosenbaum, Salutatorian, Harriman High School.

The Speaker announced that he had referred House Joint Resolution No. 1107 to Committee on Calendar.

House Joint Resolution No. 1108 -- Memorials, Academic Achievement -- Rebecca Jane Dailey, Valedictorian, Roane County High School.

The Speaker announced that he had referred House Joint Resolution No. 1108 to Committee on Calendar.

House Joint Resolution No. 1109 -- Memorials, Academic Achievement -- Jacob Paul Platfoot, Valedictorian, Roane County High School.

The Speaker announced that he had referred House Joint Resolution No. 1109 to Committee on Calendar.

House Joint Resolution No. 1110 -- Memorials, Academic Achievement -- Jessica Kate Weaver, Valedictorian, Harriman High School.

The Speaker announced that he had referred House Joint Resolution No. 1110 to Committee on Calendar.

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House Joint Resolution No. 1111 -- Memorials, Death -- Carlos "Collie" M. Bohannon.

The Speaker announced that he had referred House Joint Resolution No. 1111 to Committee on Calendar.

House Joint Resolution No. 1112 -- Memorials, Congratulations -- Harpeth High School Marching Band.

The Speaker announced that he had referred House Joint Resolution No. 1112 to Committee on Calendar.

House Joint Resolution No. 1114 -- Memorials, Academic Achievement -- Rachel Elisabeth Bingham, Salutatorian, Watertown High School.

The Speaker announced that he had referred House Joint Resolution No. 1114 to Committee on Calendar.

House Joint Resolution No. 1115 -- Memorials, Academic Achievement -- Ariela Rebecca Tutt, Valedictorian, Watertown High School.

The Speaker announced that he had referred House Joint Resolution No. 1115 to Committee on Calendar.

House Joint Resolution No. 1116 -- Memorials, Interns -- Charity Miles.

The Speaker announced that he had referred House Joint Resolution No. 1116 to Committee on Calendar.

House Joint Resolution No. 1117 -- Memorials, Interns -- Yvonda Shirelle Higgins.

The Speaker announced that he had referred House Joint Resolution No. 1117 to Committee on Calendar.

House Joint Resolution No. 1118 -- Memorials, Interns -- Mary Kathryn Carr.

The Speaker announced that he had referred House Joint Resolution No. 1118 to Committee on Calendar.

House Joint Resolution No. 1119 -- Memorials, Sports -- Unaka High School Rangers, 2004 TSSAA Class A Boys Basketball State Champions.

The Speaker announced that he had referred House Joint Resolution No. 1119 to Committee on Calendar.

Senate Joint Resolution No. 1013 -- Memorials, Heroism -- Corporal Josh Samuels, United States Marine Corps.

The Speaker announced that he had referred Senate Joint Resolution No. 1013 to Committee on Calendar.

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Senate Joint Resolution No. 1014 -- Memorials, Heroism -- Members of the United States Armed Services.

The Speaker announced that he had referred Senate Joint Resolution No. 1014 to Committee on Calendar.

Senate Joint Resolution No. 1015 -- Memorials, Death -- Inez Burns.

The Speaker announced that he had referred Senate Joint Resolution No. 1015 to Committee on Calendar.

Senate Joint Resolution No. 1016 -- Memorials, Public Service -- General Federation of Women's Clubs.

The Speaker announced that he had referred Senate Joint Resolution No. 1016 to Committee on Calendar.

Senate Joint Resolution No. 1017 -- Memorials, Recognition -- City of Goodlettsville, 150th anniversary.

The Speaker announced that he had referred Senate Joint Resolution No. 1017 to Committee on Calendar.

Senate Joint Resolution No. 1018 -- Memorials, Retirement -- Dr. William F. Ruhl, President of Goodpasture Christian School.

The Speaker announced that he had referred Senate Joint Resolution No. 1018 to Committee on Calendar.

Senate Joint Resolution No. 1019 -- Memorials, Personal Achievement -- Karl Kosman, Eagle Scout.

The Speaker announced that he had referred Senate Joint Resolution No. 1019 to Committee on Calendar.

Senate Joint Resolution No. 1020 -- Memorials, Recognition -- Chief Master Sergeant Sara A. Sellers, USAF, Retired.

The Speaker announced that he had referred Senate Joint Resolution No. 1020 to Committee on Calendar.

Senate Joint Resolution No. 1021 -- General Assembly, Confirmation of Appointment -- Sharon R. Thompson, State Board of Education.

The Speaker announced that he had referred Senate Joint Resolution No. 1021 to Committee on Calendar.

Senate Joint Resolution No. 1022 -- Memorials, Recognition -- Blake Campbell.

The Speaker announced that he had referred Senate Joint Resolution No. 1022 to Committee on Calendar.

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Senate Joint Resolution No. 1023 -- Memorials, Interns -- Gregory Tapocsi.

The Speaker announced that he had referred Senate Joint Resolution No. 1023 to Committee on Calendar.

Senate Resolution No. 198 -- Memorials, Death -- Andrew Fox.

The Speaker announced that he had referred Senate Resolution No. 198 to Committee on Calendar.

Senate Resolution No. 199 -- Memorials, Interns -- Amy Murillo.

The Speaker announced that he had referred Senate Resolution No. 199 to Committee on Calendar.

Senate Resolution No. 200 -- Memorials, Academic Achievement -- Clara Huddleston, Salutatorian, Ridgeway High School.

The Speaker announced that he had referred Senate Resolution No. 200 to Committee on Calendar.

Senate Resolution No. 201 -- Memorials, Academic Achievement -- Victoria S. Norris, Valedictorian, Kirby High School.

The Speaker announced that he had referred Senate Resolution No. 201 to Committee on Calendar.

Senate Resolution No. 202 -- Memorials, Academic Achievement -- Kaharah C. King, Salutatorian, Kirby High School.

The Speaker announced that he had referred Senate Resolution No. 202 to Committee on Calendar.

MOTION

Senator Cooper moved that Rule 83(8) be suspended for the purpose of placing **Senate Bills Nos. 529, 2360 and 3236** on the calendar for the Committee on Commerce, Labor and Agriculture for Tuesday, April 27, 2004, which motion prevailed.

MOTION

Senator Cooper moved that the rules be suspended for the purpose of amending the schedule to reflect that the Committee on Commerce, Labor and Agriculture will meet from 1:30 p.m. to 2:30 p.m. on Tuesday, April 27, 2004, and the Committee on Judiciary will meet from 2:30 p.m. to 5:30 p.m. on Tuesday, April 27, 2004, which motion prevailed.

MOTION

Senator Williams moved that Rule 83(8) be suspended for the purpose of placing **House Joint Resolution No. 926** on the calendar for the Committee on Transportation for Wednesday, April 28, 2004, which motion prevailed.

NOTICE

Pursuant to Rule 44, notice was given that the following bill was returned from the House of Representatives amended. Under the rule, the bill lies over.

MESSAGE FROM THE HOUSE

April 26, 2004

MR. SPEAKER: I am directed to return to the Senate, Senate Bill No. 3259, substituted for House Bill on same subject, amended, and passed by the House.

BURNEY T. DURHAM,
Chief Clerk.

**REPORT OF AD HOC COMMITTEE
TO REVIEW
THE RULES OF ORDER**

Mr. Speaker, the Ad Hoc Committee on Rules having met, reports to the Senate the following recommendation for amendment to the Permanent Rules of Order for the Senate for the One Hundred and Third General Assembly:

Rules 76 and 37 be amended as underlined

76. SELECT COMMITTEES.

(1) There shall be a Committee on Calendar to be composed of a Chairman to be appointed by the Speaker from its members and the majority and minority floor leaders. The Committee on Calendar shall set the calendar and receive reports from the Secretary of State.

The Committee on Calendar shall only act as a scheduling committee and shall not engage in the determination of the merits of a bill, resolution or report and shall schedule every bill, resolution or report for Senate action during that session.

Ceremonies and Special Presentations during the regular order of business shall first be scheduled by the Committee on Calendar and shall be completed within the time allotted by the Committee on Calendar.

37. SETTING THE CALENDAR.

Any bills, having been considered and reported out of the Committee to which referred, shall be referred to the Committee on Calendar, and no bill of a general nature nor report shall be considered for third and final passage until a written calendar, from the Committee on Calendar, giving notice of such bill or report, has been posted in designated places and delivered to each Senator's legislative office before two (2) o'clock p.m. at least two (2) calendar days prior to such consideration.

The Committee on Calendar shall schedule on the calendar for final consideration such number of general bills as it deems appropriate.

Should the Senate not complete any day's calendar, the bills remaining unconsidered shall go to the top of the calendar on the next day that general bills are considered.

/s/ Senator Jim Bryson
Chairman
Ad Hoc Committee on Rules
April 26, 2004

MR. SPEAKER WILDER RESUMES CHAIR

Mr. Speaker Wilder resumed the Chair.

MOTION

Senator Crowe moved that **Senate Joint Resolution No. 991** be rereferred to the Committee on Calendar, which motion prevailed.

CONSENT CALENDAR NO. 1

House Joint Resolution No. 1082 -- Memorials, Interns -- Joanna Kendall.

House Joint Resolution No. 1083 -- Memorials, Recognition -- Dr. Penny B. Ferguson.

House Joint Resolution No. 1085 -- Memorials, Academic Achievement -- Scott Allen Pack, Valedictorian, Cannon County High School.

House Joint Resolution No. 1086 -- Memorials, Academic Achievement -- Patrick William Jennings, Salutatorian, Cannon County High School.

House Joint Resolution No. 1090 -- Memorials, Congratulations -- George and Emily Kemmer, Friends of Farming.

House Joint Resolution No. 1091 -- Memorials, Recognition -- Civil War Preservation Trust and President O. James Lighthizer.

House Joint Resolution No. 1092 -- Memorials, Academic Achievement -- Nicole Lee Davidson, Salutatorian, Wilson Central High School.

House Joint Resolution No. 1093 -- Memorials, Academic Achievement -- Grace Fallin, Valedictorian, Mt. Juliet Christian Academy.

House Joint Resolution No. 1094 -- Memorials, Academic Achievement -- Kimberly Overstreet, Valedictorian, Mt. Juliet Christian Academy.

House Joint Resolution No. 1095 -- Memorials, Academic Achievement -- Amanda McCarty, Salutatorian, Mt. Juliet Christian Academy.

House Joint Resolution No. 1096 -- Memorials, Academic Achievement -- Russell Hunter Yearwood, Valedictorian, Wilson Central High School.

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House Joint Resolution No. 1097 -- Memorials, Academic Achievement -- Jessica Lynn Lotz, Salutatorian, Bartlett High School.

House Joint Resolution No. 1098 -- Memorials, Academic Achievement -- Ryan Dagen, Valedictorian, Millington High School.

House Joint Resolution No. 1099 -- Memorials, Academic Achievement -- Jennifer Tichenor, Salutatorian, Millington High School.

House Joint Resolution No. 1100 -- Memorials, Academic Achievement -- Laura E. Encalade, Valedictorian, Bolton High School.

House Joint Resolution No. 1101 -- Memorials, Academic Achievement -- Melissa Joyce Gould, Salutatorian, Bolton High School.

House Joint Resolution No. 1102 -- Memorials, Academic Achievement -- Luke Archer Knox, Valedictorian, Bartlett High School.

House Joint Resolution No. 1103 -- Memorials, Retirement -- Barbara Landrum.

House Joint Resolution No. 1104 -- Memorials, Retirement -- Chief Don Claiborne, Franklin Fire Department.

Senate Joint Resolution No. 985 -- Memorials, Academic Achievement -- Matthew Lipkowitz, Salutatorian, Heritage High School.

Senate Joint Resolution No. 986 -- Memorials, Academic Achievement -- Dustin Merritt, Valedictorian, Heritage High School.

Senate Joint Resolution No. 987 -- Memorials, Academic Achievement -- Jessica Woods, Salutatorian, Maryville High School.

Senate Joint Resolution No. 988 -- Memorials, Academic Achievement -- Kimberly Roe, Valedictorian, Maryville High School.

Senate Joint Resolution No. 989 -- Memorials, Academic Achievement -- Alexander Kane, Salutatorian, Maryville High School.

Senate Joint Resolution No. 990 -- Memorials, Recognition -- Coulter Florists.

Senate Joint Resolution No. 992 -- Memorials, Sports -- Franklin Road Christian School girls' basketball team, 2004 TAACS champions.

Senate Joint Resolution No. 995 -- Memorials, Academic Achievement -- James Travis Robbins, Valedictorian, Franklin County High School.

Senate Joint Resolution No. 997 -- Memorials, Personal Achievement -- Joseph "Corky" Coker, 2004 Meguiar's Award for Collector Car Person of the Year.

Senate Joint Resolution No. 998 -- Memorials, Recognition -- The Men of Tomorrow Program.

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Senate Joint Resolution No. 999 -- Memorials, Academic Achievement -- Shelly Ann Wood, Salutatorian, White House Heritage High School.

Senate Joint Resolution No. 1000 -- Memorials, Academic Achievement -- Cheryl Marie Jones, Valedictorian, White House Heritage High School.

Senate Joint Resolution No. 1001 -- Memorials, Academic Achievement -- Mark Tillman, Jr., Salutatorian, Jo Byrns High School.

Senate Joint Resolution No. 1002 -- Memorials, Academic Achievement -- Cathy Parish, Valedictorian, Jo Byrns High School.

Senate Joint Resolution No. 1003 -- Memorials, Interns -- Chase Johnson.

Senate Joint Resolution No. 1005 -- Memorials, Sports -- Patrick Forrest Powell, 2003 Collegiate National Pistol Champion.

Senate Joint Resolution No. 1006 -- Memorials, Academic Achievement -- Andrea Lynn Betesh, Valedictorian, Ridgeway High School.

Senate Joint Resolution No. 1007 -- Memorials, Retirement -- Mary Alyce Haynes Clay.

Senate Joint Resolution No. 1008 -- Memorials, Academic Achievement -- Khalid Hasan Usmani, Valedictorian, Craigmont High School.

Senate Joint Resolution No. 1009 -- Memorials, Academic Achievement -- Teri Ann Kirby, Salutatorian, Craigmont High School.

Senate Joint Resolution No. 1010 -- Memorials, Academic Achievement -- Sovanchampa Yos, Salutatorian, Raleigh Egypt High School.

Senate Joint Resolution No. 1011 -- Memorials, Academic Achievement -- Charles Ray Burnett, Jr., Valedictorian, Raleigh Egypt High School.

Senate Joint Resolution No. 1012 -- Memorials, Academic Achievement -- Claire Elizabeth Huddleston, Valedictorian, Ridgeway High School.

Senate Resolution No. 195 -- Memorials, Academic Achievement -- Todd Alan Wright, Salutatorian, Rockwood High School.

Senate Resolution No. 196 -- Memorials, Academic Achievement -- Rebekah Jody Miller, Valedictorian, Rockwood High School.

Senator Crowe moved that all Senate Joint Resolutions and Senate Resolutions be adopted; and all House Joint Resolutions be concurred in, which motion prevailed by the following vote:

Ayes 31
Noes 0

Senators voting aye were: Atchley, Beavers, Bryson, Burchett, Burks, Clabough, Cohen, Cooper, Crowe, Crutchfield, Dixon, Ford, Fowler, Graves, Harper, Henry, Herron, Jackson, Ketron,

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Kilby, Kurita, McLeary, McNally, Miller, Norris, Person, Ramsey, Southerland, Trail, Williams and Mr. Speaker Wilder--31.

A motion to reconsider was tabled.

CONSENT CALENDAR NO. 2

Objections having been raised, the following bill was placed at the heel of the calendar for Thursday, April 29, 2004, pursuant to Rule 38: **Senate Bill No. 3120.**

Senate Bill No. 2238 -- Medical Occupations -- Gives registered nurse employed by program for all-inclusive care for the elderly (PACE) same authority to sign death certificate of patient of PACE who dies as registered nurse has under present law for patient of licensed home care organization who dies. Amends TCA Section 68-3-511.

On motion, Senate Bill No. 2238 was made to conform with **House Bill No. 3083.**

On motion, House Bill No. 3083, on same subject, was substituted for Senate Bill No. 2238.

Senate Bill No. 2560 -- Sunset Laws -- Department of children's services, June 30, 2006. Amends TCA Title 4, Chapter 29 and Title 37, Chapter 5.

Senate Bill No. 3197 -- Child Custody and Support -- Provides that interlocutory or final judgment of a court involving custody of a child is not stayed after entry unless otherwise ordered by that court entering. Amends TCA Title 36, Chapter 6.

On motion, Senate Bill No. 3197 was made to conform with **House Bill No. 3102.**

On motion, House Bill No. 3102, on same subject, was substituted for Senate Bill No. 3197.

Senate Bill No. 3285 -- Malpractice, Professional -- Requires all health care facilities, not just hospitals, to report to the board of medical examiners certain disciplinary actions concerning physicians. Amends TCA Title 68, Chapter 11.

Senate Bill No. 3496 -- Insurance, Life -- Gives insurable interest in an insured's life to entities as beneficiary of life insurance purchased or received by assignment by 501(c)(3) or 170(c) charitable organizations in certain circumstances. Amends TCA Section 56-7-314.

Senator Crowe moved that all Senate Bills and House Bills be passed on third and final consideration, which motion prevailed by the following vote:

Ayes	31
Noes	0

Senators voting aye were: Atchley, Beavers, Bryson, Burchett, Burks, Clabough, Cohen, Cooper, Crowe, Crutchfield, Dixon, Ford, Fowler, Graves, Harper, Henry, Herron, Jackson, Ketron, Kilby, Kurita, McLeary, McNally, Miller, Norris, Person, Ramsey, Southerland, Trail, Williams and Mr. Speaker Wilder--31.

A motion to reconsider was tabled.

MOTION

Senator Crowe moved that Rule 19 be suspended for the purpose of considering the Message Calendar next, which motion prevailed.

SENATE MESSAGE CALENDAR

SENATE BILL ON HOUSE AMENDMENT

Senate Bill No. 875 -- Motor Vehicles -- Creates "Tennessee Off-Highway Motor Vehicle Act". Amends TCA Title 55, Chapter 3 and Title 70.

HOUSE AMENDMENT NO. 1

AMEND by deleting all language after the enacting clause and by substituting instead the following:

SECTION 1. Tennessee Code Annotated, Title 70, is amended by adding Sections 2 through 11 of this act as a new, appropriately designated chapter.

SECTION 2. This chapter shall be known and may be cited as the "Tennessee Off-Highway Vehicle Act".

SECTION 3. The number of off-highway vehicle users in the state is increasing and is growing as a recognized recreational activity while the number of recreational sites is rapidly declining. In the absence of a program to manage off-highway vehicle (OHV) use, a number of consequences are accruing to the state, including environmental damage and loss of economic prospects. Therefore, the general assembly finds the need to manage off-highway vehicles to maximize economic and recreational opportunities, to protect the environment of this state, and to ensure that adequate revenue is generated for such purpose.

SECTION 4. For the purpose of this chapter, unless the context otherwise requires:

(1) "Agency" means the Tennessee Wildlife Resources Agency;

(2) "Commission" means the Tennessee Wildlife Resources Commission;

(3) "Seller" means a person permitted to engage in the business of selling, offering to sell, soliciting or advertising the sale of off-road motorcycles, three or four-wheel all-terrain vehicles and/or dune buggies;

(4) "Director" means the executive director of the Tennessee Wildlife Resources Agency, the director's duly authorized representative, and, in the event of the director's absence or a vacancy in the office of director, the assistant director of the Tennessee Wildlife Resources Agency;

(5) "Off-highway vehicle or OHV" means any off-road motorcycles, three or four-wheel all-terrain vehicles or dune buggies; and

(6) "Owner" means the person in whose name the OHV is owned.

SECTION 5. The director is authorized to:

- (1) Establish and implement an off-highway vehicle program;
- (2) In cooperation with sellers and governmental agencies, develop a voluntary off-highway vehicle education program for existing and potential owners and users;
- (3) Develop guidelines on the proper land selection criteria, trail design and maintenance, and best management practices for all lands used for off-highway user purposes. In this connection, the director is authorized to develop public lands and manage for specific uses on public lands;
- (4) Study, analyze, and document the impacts of off-highway motor vehicles on surrounding habitat, including habitat loss, resource damage, noise, and vehicle emissions;
- (5) Acquire lands, through purchase or lease, for off-highway motor vehicle use. The director is encouraged to use property which is currently owned or leased by the state and which is appropriate for off-highway vehicle use before acquiring lands from private landowners. It is not the intent to open OHV use on any additional wildlife management areas or refuges without approval of the commission;
- (6) Develop and maintain a list of areas within the state that allow the use of off-highway motor vehicles;
- (7) Enter into partnerships, contracts, and other management agreements with state, federal, and local governments and with private landowners to effectuate the purposes of this chapter;
- (8) Make inspections and investigations, conduct studies and research, or take such other action as may be necessary to carry out the provisions of this chapter, and rules and regulations promulgated pursuant thereto; and
- (9) Exercise general supervision over the administration and enforcement of this chapter and all rules and regulations promulgated thereunder.

SECTION 6. The commission is authorized to promulgate rules and regulations for the following purposes:

- (1) To set, through rules and regulations, rider fees as established in this chapter;
- (2) To establish safety requirements for riders on publicly owned or leased lands. Riders under eighteen (18) years of age shall, at a minimum, wear a helmet.
- (3) To promulgate any other rules and regulations deemed reasonable and necessary to effectuate the purposes of this chapter. Such rules and regulations shall be promulgated in accordance with the Uniform Administrative Procedures Act, compiled in Title 4, Chapter 5.

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SECTION 7. The owner of an off-highway motor vehicle, off-road motorcycle, three or four-wheel all-terrain vehicle, dune buggy, or a motor vehicle designed and used primarily for

on-roadway activities shall pay to the director a rider fee in order to ride or drive on publicly owned or controlled lands that allow off-highway vehicles. Rider fees, as established through rule and regulation by the commission, may be on a "per day" or a "multiple day" basis or as deemed appropriate. The rider fees may be increased no more frequently than once every twelve (12) months and shall not exceed the increase in the consumer price index (or successor index) since the last increase was imposed.

SECTION 8. (a) The funds received by the Tennessee Wildlife Resources Agency under this chapter shall be used exclusively for the purpose of funding the operation and management of the off-highway motor vehicle program authorized under this chapter. The director may use funds collected under this chapter to acquire by purchase, gift, grant, bequest, devise, or lease, the fee or any lesser interest in land, development right, easement, covenant, or other contractual right necessary to achieve the purposes of this chapter.

(b) It is the intent of the general assembly that the off-highway vehicle program be self-funded. Use of any existing or future agency resources, revenues, or funding not derived by or through the OHV program, to administer or enforce this program shall constitute a diversion of funds under § 70-1-401. Any future federal funds received for OHV or motorized trails shall be credited to the agency for use to administer and enforce the provisions of this chapter.

SECTION 9. (a) A violation of any provision of this chapter is a Class B misdemeanor. A parent or guardian who knowingly permits a minor to operate an off-highway vehicle in violation of this chapter commits a Class B misdemeanor. A person who commits a second or subsequent offense commits a Class B misdemeanor with a mandatory fine of two hundred fifty dollars (\$250).

(b) For any conviction of violation of a provision of this chapter, the court may order restitution for damages caused by the violator, or the court may order the violator to restore the property to a state comparable to its original undamaged state. Any restitution ordered shall be paid to the landowner or to the agency if the land on which the offense occurred was owned, leased, licensed to, or in some manner under agency control. Agency control includes, but is not limited to, control through any type of agreement or understanding with any private or governmental entity permitting land to be used in connection with the OHV program.

(c) In connection with an arrest for a violation of this act, the OHV may be seized and impounded in compliance with Tennessee Code Annotated, § 40-33-101 et. seq.

(d) It is unlawful for any person to ride an off-highway motor vehicle upon the land of another without having first obtained the permission or approval of the owners of the land or of the person or persons in charge of the land who have authority from the owner to give such permission.

(e) The provisions of this chapter are enforceable and may be prosecuted by all law enforcement officers, including police officers, sheriffs, agency officers, and other peace officers charged with the enforcement of the laws of this state. The primary responsibility for the enforcement and prosecution of this chapter on private lands and on lands under local governmental ownership or control is with local law

enforcement officers. The primary responsibility for the enforcement and prosecution of this chapter on public lands not under local governmental ownership or control is with state law enforcement officers, including wildlife resources officers. It is not the legislative intent that the agency enforce trespass laws on private property unless the property is under state control.

SECTION 10. Tennessee Code Annotated, Section 70-7-104(2), is amended by deleting the subdivision in its entirety.

SECTION 11. In carrying out the purposes of this act, the Wildlife Resources Commission shall put first and foremost the welfare of wildlife and their environment and shall not degrade nor permit degradation of the commission's purpose and mission to protect and preserve the state's wildlife in accordance with Article XI, Section 13 of the Constitution of Tennessee.

SECTION 12. This act shall take effect upon becoming a law, the public welfare requiring it.

Senator Ramsey moved that the Senate concur in House Amendment No. 1 to **Senate Bill No. 875**, which motion prevailed by the following vote:

Ayes 29
Noes 1

Senators voting aye were: Atchley, Beavers, Bryson, Burchett, Burks, Clabough, Cohen, Cooper, Crowe, Crutchfield, Dixon, Ford, Fowler, Graves, Harper, Henry, Herron, Jackson, Ketron, Kurita, McLeary, McNally, Miller, Norris, Person, Ramsey, Trail, Williams and Mr. Speaker Wilder--29.

Senator voting no was: Kilby--1.

A motion to reconsider was tabled.

HOUSE AMENDMENT NO. 2

AMEND by deleting Section 7 of the bill as amended by House Conservation and Environment Committee Amendment No. 1 (HA0312), and by renumbering the remaining sections accordingly.

Senator Ramsey moved that the Senate concur in House Amendment No. 2 to **Senate Bill No. 875**, which motion prevailed by the following vote:

Ayes 31
Noes 0

Senators voting aye were: Atchley, Beavers, Bryson, Burchett, Burks, Clabough, Cohen, Cooper, Crowe, Crutchfield, Dixon, Ford, Fowler, Graves, Harper, Henry, Herron, Jackson, Ketron, Kilby, Kurita, McLeary, McNally, Miller, Norris, Person, Ramsey, Southerland, Trail, Williams and Mr. Speaker Wilder--31.

A motion to reconsider was tabled.

HOUSE AMENDMENT NO. 3

AMEND by deleting the last sentence of subdivision (5) of Section 5 of House Conservation and Environment Committee Amendment (drafting number 00690717) which reads as follows:

It is not the intent to open OHV use on any additional wildlife management areas or refuges without approval of the commission;

and by substituting instead the following:

OHV use shall be expressly prohibited in TWRA wildlife management areas or refuges used solely for hunting, fishing or other TWRA-related activities, state forests, state parks and state natural areas unless such area has been expressly approved for such use on or before the effective date of this act, except that OHV users may be allowed to access such areas if specified by rule and regulation.

Senator Ramsey moved that the Senate concur in House Amendment No. 3 to **Senate Bill No. 875**, which motion prevailed by the following vote:

Ayes	31
Noes	0

Senators voting aye were: Atchley, Beavers, Bryson, Burchett, Burks, Clabough, Cohen, Cooper, Crowe, Crutchfield, Dixon, Ford, Fowler, Graves, Harper, Henry, Herron, Jackson, Ketron, Kilby, Kurita, McLeary, McNally, Miller, Norris, Person, Ramsey, Southerland, Trail, Williams and Mr. Speaker Wilder--31.

A motion to reconsider was tabled.

SENATE BILL ON HOUSE AMENDMENT

Senate Bill No. 2139 -- Driver Licenses -- Allows restricted license for violations of implied consent to include going to and from college, court order alcohol program and interlock meetings; requires application for restricted license be made to court of suspension instead of court of county of residence. Amends TCA Title 55, Chapter 10 and Title 55, Chapter 50.

HOUSE AMENDMENT NO. 1

AMEND by deleting the first sentence of the amendatory language of Section 1 which reads:

A person whose license has been suspended by the court under this section may apply to the court suspending such license for a restricted license.

and substituting instead the following:

A person whose license has been suspended by the court under this section may apply to the court in the county where the person resides or to the court in the county suspending such license for a restricted license.

Senator Cohen moved that the Senate concur in House Amendment No. 1 to **Senate Bill No. 2139**, which motion prevailed by the following vote:

Ayes 30
Noes 0

Senators voting aye were: Atchley, Beavers, Bryson, Burchett, Burks, Clabough, Cohen, Cooper, Crowe, Crutchfield, Dixon, Ford, Fowler, Graves, Harper, Henry, Herron, Jackson, Ketron, Kilby, Kurita, McLeary, Miller, Norris, Person, Ramsey, Southerland, Trail, Williams and Mr. Speaker Wilder--30.

A motion to reconsider was tabled.

Senator Dixon moved that **Senate Bill No. 2162** be returned to the House, which motion prevailed.

Senator McNally moved that **Senate Bill No. 2300** be placed on the Message Calendar for Thursday, April 29, 2004, which motion prevailed.

SENATE BILL ON HOUSE AMENDMENT

Senate Bill No. 2524 -- Civil Procedure -- Excludes certain actions from commission of felony in misapplication of contract payments; revises prima facie evidence of intent to defraud if loan proceeds or contract payments are misapplied or if amount of lien is exaggerated. Amends TCA Title 66, Chapter 11, Part 1.

HOUSE AMENDMENT NO. 1

AMEND by deleting the amendatory language of Section 1 and substituting instead the following:

Notwithstanding, there is no violation of this section when:

(1) Funds are disbursed pursuant to written agreement; or

(2) The use of funds received and deposited in a business account for use on multiple construction projects is based upon the allocation of costs and profits in accordance with generally accepted accounting principles for construction projects.

AND FURTHER AMEND by adding the following new sentence to the end of the amendatory language of Section 2:

Use of a single business bank account for multiple projects shall not be evidence of intent to defraud.

Senator Fowler moved that **Senate Bill No. 2524** be placed on the Message Calendar for Thursday, April 29, 2004, which motion prevailed.

Mr. Speaker Wilder moved that **Senate Bill No. 2596** be placed at the heel of the Message Calendar for today, which motion prevailed.

SENATE BILL ON HOUSE AMENDMENT

Senate Bill No. 3029 -- Consumer Protection -- Makes it a deceptive trade practice to advertise for a seminar on living trusts or estate taxation unless advertisement also states the

minimum amount at which an estate must be valued in order to be subject to estate tax. Amends TCA Title 23, Chapter 3 and Title 47, Chapter 18.

HOUSE AMENDMENT NO. 3

AMEND by deleting the amendatory language of Section 1, as amended, in its entirety, and by substituting instead the following:

() (A) Using any advertisement for a workshop, seminar, conference, or other meeting that contains a reference to a living trust or a revocable living trust, or that otherwise offers advice or counsel on estate taxation unless such advertisement also includes the information required in this subsection.

(B) An advertisement as provided in this subsection shall, at a minimum, include the following:

(i) The maximum exclusion for federal estate tax purposes and the maximum exemption for state inheritance tax purposes for the year in which the advertisement appears;

(ii) Includes a statement that certain property, including real property, insurance proceeds, deposit accounts, stocks and retirement fund, may be taxable or not taxable, depending on how legal title is held and/or beneficiary designation is made;

(iii) Includes a statement that certain property may be transferred through several different means including, but not limited to, joint ownership of property with rights of survivorship, joint deposit accounts, beneficiary designations or elections permitted under retirement plans, insurance policies, trusts, or wills; and

(iv) A statement that before creating any transfer through a living trust, revocable living trust, or otherwise, the individual should seek advice from an attorney, accountant or other tax professional to determine the true tax impact and ensure that assets are properly transferred into any trust.

(C) The disclosure required in this subsection shall be printed in not less than 10-point type.

(D) The provisions of this subsection shall not apply to an advertisement by any attorney, law firm, bank, savings institution, trust company, or registered securities broker/dealer which is directed to clients or customers of such person with whom such person has had a client or customer relationship within the prior two (2) years. The provisions of this subsection shall also not apply to any continuing education seminars or conferences conducted for the benefit of bankers, attorneys, accountants, or other professional financial advisors.

Senator Ketron moved that the Senate concur in House Amendment No. 3 to **Senate Bill No. 3029**, which motion prevailed by the following vote:

Ayes 30
Noes 0

Senators voting aye were: Atchley, Beavers, Bryson, Burchett, Burks, Clabough, Cohen, Cooper, Crowe, Crutchfield, Dixon, Ford, Fowler, Graves, Harper, Henry, Herron, Jackson, Ketron, Kilby, Kurita, McLeary, McNally, Miller, Person, Ramsey, Southerland, Trail, Williams and Mr. Speaker Wilder--30.

A motion to reconsider was tabled.

SENATE BILL ON HOUSE AMENDMENT

Senate Bill No. 3340 -- Insurance, Health, Accident -- Enacts the "Health Insurance Mandated Benefits Review Act". Amends TCA Title 3 and Title 56.

HOUSE AMENDMENT NO. 2

AMEND by deleting all language following the enacting clause and by substituting instead the following:

SECTION 1. Tennessee Code Annotated, Title 3, Chapter 2, is amended by deleting Section 3-2-111 in its entirety and by substituting instead the following new language:

3-2-111. (a) As used in this section, unless the context other requires:

(1) "Mandated health benefit" means a benefit or coverage that is proposed to be required by law or that is required by law to be offered or provided by a health insurance issuer including, but not limited to, coverage for or the offering of specific health care services, treatments, diagnostic tests or practices; and

(2) "Health insurance issuer" means any entity subject to the insurance laws of this state or subject to the jurisdiction of the Department of Commerce and Insurance that contracts or offers to contract to provide health insurance coverage, including, but not limited to, an insurance company, a health maintenance organization, or a non-profit hospital and medical service corporation.

(b) As of January 2, 2005, upon the completion of all bill filing deadlines in both the House and Senate of each year, legislation containing a mandated health benefit shall be referred to the Fiscal Review Committee in order that it may evaluate the legislation's potential impact on the cost of health insurance premiums.

(1) To the extent that resources are otherwise available, the Fiscal Review Committee may conduct research; receive testimony of experts; receive technical assistance from health insurance issuers; review for purposes of comparison, the mandated health benefits upon health insurance issuers in other states and jurisdictions and the effects of such mandates; and take other actions it determines appropriate for the completion of the assigned tasks. The Fiscal Review Committee may receive pertinent data from health insurance issuers and from advocates of mandated benefits. Notwithstanding

the provisions of Tennessee Code Annotated, Title 10, Chapter 7, Part 1, such data will be held as confidential by the Fiscal Review Committee.

(2) The Fiscal Review Committee may draw on existing expertise within the Departments of Health, Commerce and Insurance, Finance and Administration, the TennCare Bureau, and any other state agency or official, to perform these functions. If the Fiscal Review Committee determines that additional resources are needed to evaluate fully a proposal, such request shall be directed to the Finance, Ways and Means Committees of the Senate and House of Representatives for consideration of funding as an amendment to the General Appropriations Act.

(3) The Fiscal Review Committee shall, no later than March 15 of the year in which the legislation is filed, attach to such legislation a statement on the proposed mandated benefit's impact on the premiums for health insurance coverage in Tennessee, especially for employees of companies employing fewer than fifty (50) employees. If the impact cannot be reasonably determined without additional resources, a statement to that effect, including the amount of additional resources needed, shall be included. The impact statement shall be available for the appropriate legislative committee when considering such proposal.

(4) Nothing in this section shall be construed to prohibit any health insurance issuer from voluntarily expanding or eliminating coverage nor to prohibit any individual or employer from electing to expand or eliminate coverage on any health maintenance organization contract or individual or group health insurance policy or contract covering the individual, the employer or employees of the employer, as applicable.

(c) The Fiscal Review Committee is encouraged to inquire into and make recommendations with respect to the costs of:

(1) Each and every state and federally mandated health benefit placed upon health insurance issuers in Tennessee since 1990; and

(2) The impact of each such mandated health benefit on the premiums for health insurance coverage in Tennessee, especially on employees of companies with fewer than fifty (50) employees.

(3) In accordance with this subsection, the Fiscal Review Committee is encouraged to make a final report with recommendations to the general assembly no later than January 1, 2006.

(4) The Fiscal Review Committee may draw on existing expertise within the Departments of Health, Commerce and Insurance, Finance and Administration, the TennCare Bureau, and any other state agency or official, to perform these functions. If the Fiscal Review Committee determines that additional resources are needed to evaluate fully a proposal, such request shall be directed to the Finance, Ways and Means Committees of the Senate and House of Representatives for consideration of funding as an amendment to the General Appropriations Act.

SECTION 2. The Fiscal Review Committee shall perform its duties under this act within its existing budgeted resources unless additional resources are provided in the General Appropriations Act.

SECTION 3. This act shall take effect upon becoming a law, the public welfare requiring it.

Senator Graves moved that the Senate concur in House Amendment No. 2 to **Senate Bill No. 3340**, which motion prevailed by the following vote:

Ayes	30
Noes	0

Senators voting aye were: Atchley, Beavers, Bryson, Burchett, Burks, Clabough, Cohen, Cooper, Crowe, Crutchfield, Dixon, Ford, Fowler, Graves, Harper, Henry, Herron, Jackson, Ketron, Kilby, Kurita, McLeary, McNally, Miller, Person, Ramsey, Southerland, Trail, Williams and Mr. Speaker Wilder--30.

A motion to reconsider was tabled.

HOUSE AMENDMENT NO. 3

AMEND by inserting the words "including advocates of such mandated benefits" after the word "experts" in the first sentence of subdivision (b)(1) of Section 1 as amended.

Senator Graves moved that the Senate concur in House Amendment No. 3 to **Senate Bill No. 3340**, which motion prevailed by the following vote:

Ayes	30
Noes	0
Present, not voting . . .	1

Senators voting aye were: Atchley, Beavers, Bryson, Burchett, Burks, Clabough, Cohen, Cooper, Crowe, Crutchfield, Dixon, Ford, Fowler, Graves, Harper, Herron, Jackson, Ketron, Kilby, Kurita, McLeary, McNally, Miller, Norris, Person, Ramsey, Southerland, Trail, Williams and Mr. Speaker Wilder--30.

Senator present and not voting was: Henry--1.

A motion to reconsider was tabled.

SENATE BILL ON HOUSE AMENDMENT

Senate Bill No. 3400 -- Transportation, Dept. of -- Allows department to conduct studies to determine whether disadvantaged groups are underutilized on construction projects. Amends TCA Title 4, Chapter 3, Part 23.

HOUSE AMENDMENT NO. 1

AMEND by deleting all language after the enacting clause and by substituting instead the following:

SECTION 1. Tennessee Code Annotated, Section 4-3-2305, is amended by adding the following language:

(c) It being in the public interest and for a public purpose to support the participation of small businesses in department contracts, the department is authorized to establish the programs described herein to assist small businesses to participate in department contracts, either as a prime or as a subcontractor. Small business shall be defined to include certified disadvantaged business enterprises as defined by 49 Code of Federal Regulations Part 26 and business enterprises that satisfy all the requirements of a disadvantaged business enterprise under Part 26, including but not limited to requirements of business size and net worth of owners, other than the requirement that the owners of the business qualify as a member of the groups identified in subsection 2 of the definition of socially and economically disadvantaged individuals in 49 Code of Federal Regulations Part 26.5. The commissioner may promulgate rules to implement the purpose of this section.

(1) The department is authorized to conduct studies to determine whether any group consisting of socially and economically disadvantaged individuals as defined in 49 Code of Federal Regulations Part 26 is underutilized on state funded construction projects. In the event underutilization is documented and any other necessary findings are made, the commissioner may elect to set appropriate goals on state funded projects.

(2) The department is authorized to offer construction management development programs for small businesses and may charge a fee for the programs.

(3) The department is authorized to create and implement a surety bond guarantee program for small businesses to act as subcontractors on department construction projects. The state may guarantee up to ninety percent (90%) of a surety bond amount of two hundred fifty thousand dollars (\$250,000) or less and up to eighty percent (80%) of a surety bond amount greater than two hundred fifty thousand dollars (\$250,000) which surety bond is provided by an approved surety. The department may be entitled to receive a fee from a participating small business and may require any participating small business to set aside part of the subcontract amount as security for the surety bond and/or guarantee. The department is required to promulgate rules to effectuate this subsection. In no event shall the total amount guaranteed under this program at any given time exceed five million dollars (\$5,000,000). The department is authorized to expend funds from the highway fund to fund administrative expenses and fund any losses that may arise under the surety bond guarantee program.

(4) Annually, the commissioner shall report in writing the progress of this program to the Speaker of the Senate, the Speaker of the House of Representatives, and the Governor. The report shall include, as a minimum, the number of users of the surety bond guarantee plan; the number of defaults and dollar loss; the cost of the program categorized by cost of administration; and the cost of instruction (on-the-job and classroom).

SECTION 2. This act shall take effect upon becoming a law, the public welfare requiring it.

Senator Dixon moved that the Senate concur in House Amendment No. 1 to **Senate Bill No. 3400**, which motion prevailed by the following vote:

Ayes	30
Noes	0

Senators voting aye were: Atchley, Beavers, Bryson, Burchett, Burks, Clabough, Cohen, Cooper, Crowe, Crutchfield, Dixon, Ford, Fowler, Graves, Harper, Henry, Herron, Jackson, Ketron, Kilby, Kurita, McLeary, McNally, Miller, Person, Ramsey, Southerland, Trail, Williams and Mr. Speaker Wilder--30.

A motion to reconsider was tabled.

SENATE BILL ON HOUSE AMENDMENT

Senate Bill No. 3403 -- Transportation, Dept. of -- Grants commissioner emergency contracting authority in event of transportation system failure or other emergency that presents hazard to the traveling public or significant delay in transportation.

HOUSE AMENDMENT NO. 1

AMEND by adding the following language as a new concluding sentence to amendatory subsection (b) of Section 1 of the printed bill:

Within thirty (30) days of the commissioner entering into a contract under this section, copies of all bids and supporting documentation shall be filed with the Fiscal Review Committee.

Senator McLeary moved that the Senate concur in House Amendment No. 1 to **Senate Bill No. 3403**, which motion prevailed by the following vote:

Ayes	31
Noes	0

Senators voting aye were: Atchley, Beavers, Bryson, Burchett, Burks, Clabough, Cohen, Cooper, Crowe, Crutchfield, Dixon, Ford, Fowler, Graves, Harper, Henry, Herron, Jackson, Ketron, Kilby, Kurita, McLeary, McNally, Miller, Norris, Person, Ramsey, Southerland, Trail, Williams and Mr. Speaker Wilder--31.

A motion to reconsider was tabled.

Senator Ford moved that **Senate Bill No. 2596** be placed on the Message Calendar for Monday, May 3, 2004, which motion prevailed.

CALENDAR

Senate Joint Resolution No. 71 -- Constitutional Amendments. Amends Article II, Section 28, of Tennessee Constitution to provide property tax relief for senior citizens, as amended.

Senator Norris moved that the Clerk read the resolution, as amended, which motion prevailed.

The Clerk read the resolution, as amended.

Thereupon, Mr. Speaker Wilder declared pursuant to Article XI, Section 3 **Senate Joint Resolution No. 71**, as amended, had been read.

Senate Bill No. 3242 -- Taxes, Real Property -- Classifies certain property associated with utilities and railroads as real property for purposes of the property taxation.

On motion, Senate Bill No. 3242 was made to conform with **House Bill No. 3289**.

On motion, House Bill No. 3289, on same subject, was substituted for Senate Bill No. 3242.

Senator Henry moved to amend as follows:

AMENDMENT NO. 1

AMEND by deleting the amendatory language of Section 1(B) and by substituting instead the following:

(B) Telephone, broadcast, transmission and telegraph poles, supports, conduits, towers and inclosures for electrical conductors upon, above and underground and pipes and conduits used for wire, cables and lines buried underground except for underground conduits and inclosures for wire, cables, lines and similar facilities owned, leased or used to provide services pursuant to the terms and authority of a franchise license issued by an appropriate franchising authority in accordance with Section 7-59-102. This act shall not operate to change the classification of any radio or television broadcast property that was assessed as tangible personal property for the tax year 2003;

AND FURTHER AMEND by deleting the language "(E) ramps, pillars, poles, foundation, or connected with any one (1) utility service, such as electricity, natural gas, water, or telephone;" from the amendatory language of Section 1 and by substituting instead the following language:

ramps, pillars, poles, foundation, or connected with any one (1) utility service, such as electricity, natural gas, water or telephone, provided, that nothing in this section shall be construed to include boats temporarily connected with any utility service, or floating dry-dock equipment or boat lifts;

AND FURTHER AMEND by deleting Section 3 and by substituting the following:

SECTION 3. This act shall take effect on becoming law, the public welfare requiring it, and shall apply to tax year 2004, and to tax years thereafter, and to any claim(s) for prior years that have not been finally adjudicated by the state board of equalization as of the effective date of this act.

AND FURTHER AMEND by deleting the word "fixtures" from the amendatory language of subdivision (A) of Section 1 of the printed bill and by substituting instead the language "improvements or structures".

On motion, Amendment No. 1 was adopted.

On motion of Senator Cooper, Amendment No. 2 was withdrawn.

Senator Henry moved that **House Bill No. 3289**, as amended, be moved five places down on the calendar for today, which motion prevailed.

Senator Graves moved that **Senate Bill No. 3397** be placed on the calendar for Thursday, April 29, 2004, which motion prevailed.

Senator McLeary moved that **House Bill No. 2719** be placed on the calendar for Thursday, April 29, 2004, which motion prevailed.

Mr. Speaker Wilder moved that **Senate Bill No. 3136**, as amended, be placed on the calendar for Thursday, April 29, 2004, which motion prevailed.

Senate Bill No. 243 -- Child Custody and Support -- Prohibits Department of Human Services from hearing petitions to modify child support order. Amends TCA Title 36; Title 37; and Title 71.

Senator Person moved to amend as follows:

AMENDMENT NO. 1

AMEND by deleting all language following the enacting clause and by substituting instead the following:

SECTION 1. Tennessee Code Annotated, Section 36-5-103, is amended by deleting subsection (f) in its entirety and by substituting instead the following:

(f)(1)(A) Every three (3) years, upon request of the custodial or noncustodial parent, or any other caretaker of the child, or, if there is an assignment of support pursuant to Title 71, Chapter 3, Part 1, upon the request of the department or upon the request of the custodial or noncustodial parent, or of any other caretaker of the child, then, in any support order subject to enforcement under Title IV-D of the Social Security Act, the department shall review, and, if appropriate, seek an adjustment of the order in accordance with child support guidelines established pursuant to § 36-5-101(e) without a requirement for proof or showing of any other change in circumstances. If at the time of the review, there is a "significant variance", as defined by the department's child support guidelines, between the current support order and the amount that would be ordered under the department's child support guidelines, the department shall seek an adjustment of the order.

(B) In the case of a request for review that is made between three-year cycles, the department shall review, and, if the requesting party demonstrates to the department that there has been a substantial change in circumstances, the department shall seek an adjustment to the support order in accordance with the guidelines established pursuant to § 36-5-101(e). For purposes of this subsection, a "substantial change in circumstances" shall be a "significant

variance", as defined by the department's child support guidelines, between the amount of the current order and the amount that would be ordered under the department's child support guidelines.

(C) The review and adjustment in subdivisions (1)(A) and (B) may be conducted by the court, or by the department by issuance of an administrative order by the department or its contractors.

(2) As an alternative to the method described in subdivision (1) for review and adjustment, the child support order may be reviewed, and the order may be adjusted by an administrative order issued by the department or its contractors by:

(A) Applying a cost-of-living adjustment to the order in accordance with a formula developed by the department; or

(B) Using automated methods, including automated comparisons with wage data to identify orders eligible for review, conduct the review, identify orders eligible for adjustment, and apply the appropriate adjustment to the orders eligible for adjustment based upon a threshold developed by the department.

(3) The methods for adjustment of orders of support by issuance of an administrative order pursuant to this section shall be promulgated in the department's rules.

(4) The department shall give written notice to the obligor and obligee that a review of the order of support has been initiated.

(5) The department shall give written notice to the obligor and obligee of the review findings. If the department elects to seek the adjustment of the support order by issuance of an administrative order instead of by judicial order, notice of the proposed administrative adjustment to the order of support shall be sent to the last known address of the obligor and obligee thirty (30) calendar days prior to the issuance of the administrative order adjusting the order of support pursuant to the same procedures for service of administrative orders described in § 36-5-807.

(6)(A) The obligor and obligee shall have the right to contest the proposed administrative adjustment to the order of support within thirty (30) days of the mailing date of the notice of the proposed administrative adjustment to the order of support by filing a motion for a hearing on the proposed adjustment with the court having jurisdiction to modify the order of support and by providing notice of the hearing to the department by copy of such motion.

(B) The review by the court shall be completed within timeframes established by federal law.

(C) If the obligor or obligee contests the proposed administrative adjustment pursuant to the procedure in this

subdivision, no further administrative appeal to the department shall be available, and further appeal of the modified support order entered by the court shall be made pursuant to the Tennessee Rules of Appellate Procedure.

(7) If the obligor or obligee does not contest the proposed administrative adjustment to the order of support within thirty (30) calendar days of the mailing date of the notice of the proposed adjustment pursuant to the provisions of subdivision (6), the department shall issue the administrative order adjusting the order of support.

(8) A copy of an administrative order of adjustment of the child support order shall be sent to the clerk of the court that has jurisdiction of the child support order which has been administratively adjusted and it shall be filed in the court record. A copy of the order shall be sent to the obligor and the obligee by the department by general mail at the last known address shown in the department's records.

(9) If an order of support is adjusted by administrative order of the department pursuant to subdivision (7), the obligor and obligee shall have the right to administratively appeal the adjustment by requesting the appeal to the department as provided in Part 10 of this chapter. The obligor or obligee may request a stay of the administrative order pursuant to the provisions of the Uniform Administrative Procedures Act compiled in Title 4, Chapter 5. The appeal from any decision resulting from the administrative appeal shall be to the court having jurisdiction of the support order and shall be subject to the scope of review as provided pursuant to the provisions of § 36-5-1003.

(10) Notice of the right to request a review, and, if appropriate, adjust the child support order shall be sent to the obligor and the obligee by the department at least every three (3) years for a child subject to an order being enforced pursuant to Title IV-D of the Social Security Act. The notice may be included in the order.

(11) The requirement for review and adjustment may be delayed if the best interests of the child require. Such interests would include the threat of physical or emotional harm to the child if the review and adjustment were to occur or the threat of severe physical or emotional harm to the child's custodial parent or caretaker.

SECTION 2. This act shall become effective upon becoming law for purposes of rulemaking, and shall become effective for all other purposes on January 1, 2005, the public welfare requiring it.

On motion, Amendment No. 1 was adopted.

Thereupon, **Senate Bill No. 243**, as amended, passed its third and final consideration by the following vote:

Ayes	31
Noes	0

Senators voting aye were: Atchley, Beavers, Bryson, Burchett, Burks, Clabough, Cohen, Cooper, Crowe, Crutchfield, Dixon, Ford, Fowler, Graves, Harper, Henry, Herron, Jackson, Ketron, Kilby, Kurita, McLeary, McNally, Miller, Norris, Person, Ramsey, Southerland, Trail, Williams and Mr. Speaker Wilder--31.

A motion to reconsider was tabled.

Senate Bill No. 2223 -- Public Contracts -- Adds Hamilton County to current list of counties eligible for a pilot program to reimburse licensed residential homes for the aged if such pilot program is established by the board for licensing health care facilities. Amends TCA Section 12-4-320.

On motion, Senate Bill No. 2223 was made to conform with **House Bill No. 2323**.

On motion, House Bill No. 2323, on same subject, was substituted for Senate Bill No. 2223.

Thereupon, **House Bill No. 2323** passed its third and final consideration by the following vote:

Ayes	20
Noes	8
Present, not voting . . .	2

Senators voting aye were: Atchley, Beavers, Bryson, Burchett, Cohen, Crowe, Crutchfield, Dixon, Ford, Fowler, Harper, Ketron, Kilby, McLeary, Miller, Norris, Person, Ramsey, Southerland and Mr. Speaker Wilder--20.

Senators voting no were: Burks, Henry, Herron, Jackson, Kurita, McNally, Trail and Williams--8.

Senators present and not voting were: Clabough and Cooper--2.

A motion to reconsider was tabled.

MOTION

Senator Cohen moved that Rule 83(8) be suspended for the purpose of placing **Senate Bill No. 3078** on the calendar for the Committee on State and Local Government for Tuesday, April 27, 2004, which motion prevailed.

MOTION

On motion of Senator Person, his name was added as sponsor of **Senate Bill No. 243**; and **Senate Joint Resolutions Nos. 1006 and 1012**.

On motion of Senator Clabough, his name was added as prime sponsor of **Senate Bill No. 529**.

On motion, all Senators' names were added as sponsors of **Senate Joint Resolutions Nos. 992, 1003, 1005, 1024 and 1025**; and **Senate Bill No. 243**.

MONDAY, APRIL 26, 2004 -- 84TH LEGISLATIVE DAY

On motion of Senator Cooper, his name was added as prime sponsor of **Senate Bill No. 3236**.

On motion of Senator Burchett, his name was removed as sponsor of **Senate Bill No. 3236**.

On motion of Senator Cooper, his name was added as sponsor of **Senate Bill No. 3159**.

On motion of Senator Crutchfield, his name was added as sponsor of **Senate Bill No. 2223**.

On motion of Senator Clabough, his name was added as sponsor of **Senate Bill No. 3419**.

On motion of Senator Burks, her name was added as sponsor of **House Joint Resolution No. 1090; and Senate Bills Nos. 2364, 2719, 2897, 3159 and 3397**.

On motion of Senator Herron, his name was added as sponsor of **Senate Bills Nos. 3159 and 3397**.

On motion of Senator Kilby, his name was added as sponsor of **Senate Bill No. 2364**.

On motion of Senator McLeary, his name was added as sponsor of **Senate Bill No. 3340**.

On motion of Senator Beavers, her name was added as sponsor of **House Joint Resolutions Nos. 1085, 1086, 1091, 1092, 1093, 1094, 1095 and 1096**.

On motion of Senator Bryson, his name was added as sponsor of **House Joint Resolutions Nos. 1091, 1103 and 1104**.

On motion of Senator Norris, his name was added as sponsor of **House Joint Resolutions Nos. 1090, 1097, 1098, 1099, 1100, 1101 and 1102; and Senate Bill No. 3120**.

On motion of Senator Henry, his name was added as sponsor of **House Joint Resolution No. 1091**.

On motion of Senator Dixon, his name was added as sponsor of **House Joint Resolutions Nos. 1097, 1098, 1099, 1100, 1101 and 1102; and Senate Joint Resolutions Nos. 1006, 1007, 1008, 1009, 1010, 1011 and 1012**.

On motion of Senator McNally, his name was added as sponsor of **Senate Bill No. 3057**.

ENGROSSED BILLS

April 26, 2004

MR. SPEAKER: Your Chief Engrossing Clerk begs leave to report that we have carefully examined Senate Bills Nos. 243, 3285 and 3496; and find same correctly engrossed and ready for transmission to the House.

PATRICK W. MERKEL,
Chief Engrossing Clerk.

ENGROSSED BILLS

April 26, 2004

MR. SPEAKER: Your Chief Engrossing Clerk begs leave to report that we have carefully examined Senate Joint Resolutions Nos. 1024 and 1025, and find same correctly engrossed and ready for transmission to the House.

PATRICK W. MERKEL,
Chief Engrossing Clerk.

ENGROSSED BILLS

April 26, 2004

MR. SPEAKER: Your Chief Engrossing Clerk begs leave to report that we have carefully examined Senate Joint Resolution No. 990, and find same correctly engrossed and ready for transmission to the House.

PATRICK W. MERKEL,
Chief Engrossing Clerk.

ENGROSSED BILLS

April 26, 2004

MR. SPEAKER: Your Chief Engrossing Clerk begs leave to report that we have carefully examined Senate Bill No. 2560, and find same correctly engrossed and ready for transmission to the House.

PATRICK W. MERKEL,
Chief Engrossing Clerk.

ENGROSSED BILLS

April 27, 2004

MR. SPEAKER: Your Chief Engrossing Clerk begs leave to report that we have carefully examined Senate Joint Resolutions Nos. 985, 986, 987, 988, 989, 992, 995, 997, 998, 999, 1000, 1001, 1002, 1003, 1005, 1006, 1007, 1008, 1009, 1010, 1011 and 1012; and find same correctly engrossed and ready for transmission to the House.

PATRICK W. MERKEL,
Chief Engrossing Clerk.

MESSAGE FROM THE HOUSE

April 26, 2004

MR. SPEAKER: I am directed to transmit to the Senate, House Bills Nos. 1219, 2327, 2612, 3203, 3501, 3510, 3524 and 3593; passed by the House.

BURNEY T. DURHAM,
Chief Clerk.

MESSAGE FROM THE HOUSE

April 26, 2004

MR. SPEAKER: I am directed to transmit to the Senate, House Joint Resolutions Nos. 997, 1043, 1120, 1121, 1122, 1123, 1124 and 1125; adopted, for the Senate's action.

BURNEY T. DURHAM,
Chief Clerk.

MESSAGE FROM THE HOUSE

April 26, 2004

MR. SPEAKER: I am directed to return to the Senate, Senate Bills Nos. 2153, 2344, 2446, 2745 and 3420; substituted for House Bills on same subjects and passed by the House.

BURNEY T. DURHAM,
Chief Clerk.

MESSAGE FROM THE HOUSE

April 26, 2004

MR. SPEAKER: I am directed to return to the Senate, Senate Joint Resolutions Nos. 945, 946, 947, 948, 949, 950, 951, 952, 953, 954, 955, 956, 957, 958, 959, 960, 961, 962, 963, 964, 965, 966, 967, 968, 969, 970, 976, 977, 978, 979, 980, 981, 982 and 983; concurred in by the House.

BURNEY T. DURHAM,
Chief Clerk.

MESSAGE FROM THE HOUSE

April 26, 2004

MR. SPEAKER: I am directed to return to the Senate, Senate Joint Resolution No. 990, concurred in by the House.

BURNEY T. DURHAM,
Chief Clerk.

ENROLLED BILLS

April 26, 2004

MR. SPEAKER: Your Chief Engrossing Clerk begs leave to report that we have carefully compared Senate Bills Nos. 2097, 2407, 2673, 2674, 2713, 3046, 3398 and 3458; and find same correctly enrolled and ready for the signatures of the Speakers.

PATRICK W. MERKEL,
Chief Engrossing Clerk.

ENROLLED BILLS

April 27, 2004

MONDAY, APRIL 26, 2004 -- 84TH LEGISLATIVE DAY

MR. SPEAKER: Your Chief Engrossing Clerk begs leave to report that we have carefully compared Senate Resolutions Nos. 195 and 196; and Senate Joint Resolutions Nos. 945, 946, 947,

MONDAY, APRIL 26, 2004 -- 84TH LEGISLATIVE DAY

948, 949, 950, 951, 952, 953, 954, 955, 956, 957, 958, 959, 960, 961, 962, 963, 964, 965, 966, 967, 968, 969, 970, 976, 977, 978, 979, 980, 981, 982, 983 and 990; and find same correctly enrolled and ready for the signatures of the Speakers.

PATRICK W. MERKEL,
Chief Engrossing Clerk.

ENROLLED BILLS

April 27, 2004

MR. SPEAKER: Your Chief Engrossing Clerk begs leave to report that we have carefully compared Senate Bills Nos. 875, 2139, 2153, 2344, 2446, 2745, 3029, 3340, 3400, 3403 and 3420; and find same correctly enrolled and ready for the signatures of the Speakers.

PATRICK W. MERKEL,

MESSAGE FROM THE HOUSE

April 26, 2004

MR. SPEAKER: I am directed to transmit to the Senate, House Bills Nos. 807, 2187, 2191, 2214, 2256, 2555, 2563, 2619, 2746, 2890, 3004, 3097, 3180 and 3285; for the signature of the Speaker.

BURNEY T. DURHAM,
Chief Clerk.

SIGNED

April 27, 2004

The Speaker announced that he had signed the following: Senate Bills Nos. 2097, 2407, 2673, 2674, 2713, 3046, 3398 and 3458; and House Bills Nos. 857, 2258, 2459, 2464, 2901, 2975, 3515, 3577, 3587 and 3588.

SIGNED

April 27, 2004

The Speaker announced that he had signed the following: Senate Bills Nos. 875, 2139, 2153, 2344, 2446, 2745, 3029, 3340, 3400, 3403 and 3420.

SIGNED

April 27, 2004

The Speaker announced that he had signed the following: Senate Resolutions Nos. 195 and 196; Senate Joint Resolutions Nos. 945, 946, 947, 948, 949, 950, 951, 952, 953, 954, 955, 956, 957, 958, 959, 960, 961, 962, 963, 964, 965, 966, 967, 968, 969, 970, 976, 977, 978, 979, 980, 981, 982, 983 and 990; and House Bills Nos. 807, 2187, 2191, 2214, 2256, 2555, 2563, 2619, 2746, 2890, 3004, 3097, 3180 and 3285.

MESSAGE FROM THE HOUSE

April 27, 2004

MR. SPEAKER: I am directed to return to the Senate, Senate Joint Resolutions Nos. 945, 946, 947, 948, 949, 950, 951, 952, 953, 954, 955, 956, 957, 958, 959, 960, 961, 962, 963, 964, 965, 966, 967, 968, 969, 970, 976, 977, 978, 979, 980, 981, 982, 983 and 990; signed by the Speaker.

BURNEY T. DURHAM,
Chief Clerk.

REPORT OF CHIEF ENGROSSING CLERK

April 27, 2004

MR. SPEAKER: Your Chief Engrossing Clerk begs leave to report that we have transmitted to the Governor the following: Senate Joint Resolutions Nos. 945, 946, 947, 948, 949, 950, 951, 952, 953, 954, 955, 956, 957, 958, 959, 960, 961, 962, 963, 964, 965, 966, 967, 968, 969, 970, 976, 977, 978, 979, 980, 981, 982, 983 and 990; for his action.

PATRICK W. MERKEL,
Chief Engrossing Clerk.

MESSAGE FROM THE GOVERNOR

April 27, 2004

MR. SPEAKER: I am directed by the Governor to return herewith: Senate Bills Nos. 2981 and 3377, with his approval.

ROBERT E. COOPER, JR.,
Counsel to the Governor.

**REPORT OF COMMITTEE ON CALENDAR
CONSENT CALENDAR #1**

MR. SPEAKER: Your Committee on Calendar begs leave to report that we have met and set the following bills on the calendar for Thursday, April 29, 2004: House Joint Resolutions Nos. 1087, 1105, 1106, 1107, 1108, 1109, 1110, 1111, 1112, 1114, 1115, 1116, 1117, 1118 and 1119; Senate Joint Resolutions Nos. 1013, 1014, 1015, 1016, 1017, 1018, 1019, 1020, 1022 and 1023; and Senate Resolutions Nos. 198, 199, 200, 201 and 202.

This the 27th day of April, 2004.
CROWE, Chairperson.

**REPORT OF COMMITTEE ON CALENDAR
CONSENT CALENDAR #2**

MR. SPEAKER: Your Committee on Calendar begs leave to report that we have met and set the following bills on the calendar for Thursday, April 29, 2004: Senate Bills Nos. 2409, 2696, 3043 and 3245.

This the 27th day of April, 2004.
CROWE, Chairperson.

REPORT OF COMMITTEE ON CALENDAR

MR. SPEAKER: Your Committee on Calendar begs leave to report that we have met and set the following bills on the calendar for Thursday, April 29, 2004: Senate Joint Resolution No. 71; Senate Bills Nos. 3392 and 3394; House Bill No. 3289; Senate Bills Nos. 2242, 2364, 2840, 2868, 2897, 3226, 3235, 3287, 3316, 3468, 1892, 2764, 3099, 3337, 3120, 1306, 1340, 2185, 2346, 2365, 2415, 2796, 3198, 3202, 2391, 3136, 3336 and 3397; and House Bills Nos. 1249 and 2719.

This the 27th day of April, 2004.
CROWE, Chairperson.

**SENATE
MESSAGE CALENDAR**

Pursuant to Rule 44, notice has been given on the following bills and they have been set on the Message Calendar for Thursday, April 29, 2004: Senate Bills Nos. 2300, 2329, 2524 and 2596.

ADJOURNMENT

Senator Crutchfield moved the Senate adjourn until 10:30 a.m., Thursday, April 29, 2004, which motion prevailed.